

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Case No. 04-80480-11
Honorable Patrick J. Duggan

SAFI SOBH,

Defendant.

/

ORDER DENYING CERTIFICATE OF APPEALABILITY

On May 15, 2007, Defendant Safi Sobh “(Sobh”) was convicted as charged in a First Superseding Indictment of conspiracy to commit federal bank fraud and aiding and abetting other co-defendants in the crime of bank fraud. This Court sentenced Sobh on October 2, 2007. After failing to prevail on appeal, Sobh filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, which this Court denied in an opinion and order entered August 27, 2010. Sobh filed a motion for reconsideration, which this Court denied on December 9, 2010. Sobh has filed a notice of appeal with respect to the Court’s decisions.

A certificate of appealability is required from this Court before Petitioner may pursue his appeal. 28 U.S.C. § 2253; Rule 11(a) of the Rules Governing Section 2255 Proceedings. Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the Supreme Court has stated, when a district court denies a habeas

petition on the merits of the claims, a certificate may issue if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

In his § 2255 motion, Sobh raised two grounds in support of his request for relief: (1) the Court lacked subject matter jurisdiction because the First Superseding Indictment was deficient; and (2) he was denied the effective assistance of trial and appellate counsel based on counsels' failure to challenge the sufficiency of the indictment. Concluding that the indictment contained all of the elements of the offenses charged, this Court found both arguments meritless. The Court now concludes that reasonable jurists would not find its assessment of those claims debatable or wrong.

Accordingly,

IT IS ORDERED, that the Court **DENIES** Petitioner a certificate of appealability.

Date: s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Safi Sobh
#40574-039
FMC Lexington
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

AUSA Cynthia J. Oberg
AUSA Julie A. Beck